

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES FORTUNE,

Plaintiff,

- against -

MAXIM MEDIA INC.

Defendant.

Docket No. 1:17-cv-4715

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff James Fortune (“Fortune” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Maxim Media Inc. (“Maxim” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of an iconic copyrighted photograph of English musician and songwriter John Bonham of the British rock band Led Zeppelin, owned and registered by Fortune, a Virginia based music photojournalist. Accordingly, Fortune seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Fortune is a well known professional music photojournalist having a usual place of business at 12420 N. Oaks Drive, Ashland, Virginia 23005. Fortune has photographed rock and roll icons such as Mick Jagger, Paul McCartney, Robert Plant, Jim Morrison, Elton John and many others others. His photographs have appeared in galleries around the world and won numerous awards.

6. Upon information and belief, Maxim is a foreign business corporation duly organized and existing under the laws of the State of Indiana, with a place of business at 415 Madison Avenue, 3rd Floor, New York, New York 10017. Upon information and belief, Maxim is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Maxim has owned and operated a website at the URL: www.Maxim.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Fortune photographed British musician John Bonham (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Fortune is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph is registered with the United States Copyright Office and was given number VA 971-255.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about February 24, 2015, Maxim ran an article on the Website entitled *Led Zeppelin's Physical Graffiti Has Turned 40*. See <https://www.maxim.com/entertainment/led-zeppelins-physical-graffiti-has-turned-40>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto in Exhibit C.

11. Maxim did not license the Photograph from Plaintiff for its article, nor did Maxim have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST MAXIM)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Maxim infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Maxim is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Maxim have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

16. As a direct and proximate cause of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and defendant's profits pursuant to 17 U.S.C. § 504(b).

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to recover his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Maxim be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorney's fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 22, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Telephone: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff James Fortune